

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
)	

To: Chief, Wireline Competition Bureau

PETITION FOR CLARIFICATION AND WAIVER

MoKan Dial Telephone Company (MoKan), by its attorneys, hereby requests clarification and, if necessary, waiver of the Commission's rules and orders concerning the implementation of wireline to wireless local number portability, pursuant to sections 1.3 and 52.25(e) of the Commission's rules and its wireline-wireless porting issues *Order*¹ released November 10, 2003. Specifically, MoKan requests a waiver, until May 24, 2004, of the requirement that wireline carriers are required to port telephone numbers to wireless carriers in the top 100 MSAs in compliance with the *Order* by November 24, 2003.²

MoKan asks the Commission to clarify whether wireless carriers were required to request portability from wireline carriers in the top 100 MSAs by February 24, 2003, for the wireline carrier to be required to provide intermodal portability by November 24, 2003. Further, MoKan asks the Commission to clarify that requests from wireless carriers received by wireline carriers

¹ Telephone Number Portability, CTIA Petitions for Declaratory Ruling on Wireline-Wireless Porting Issues, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116 (rel. November 10, 2003) (*Order*).

² MoKan did not file a waiver petition earlier because the rate center issues that make a waiver necessary were squarely before the Commission in the CTIA Declaratory Ruling Petition filed on January 23, 2003. It did not become clear until November 10, 2003 when the Commission ruled on that Petition that a waiver was needed.

in the top 100 MSAs between February 24, 2003 and November 23, 2003, should be treated as received on November 24, 2003. Finally, Mogan asks the Commission to clarify whether wireline carriers in the top 100 MSAs that, to date, have not implemented portability in any of their switches are subject to the implementation schedule in section 52.23(b)(iv), which refers to implementation of additional switches in the top 100 MSAs.

REQUEST FOR WAIVER, AS NECESSARY

In the *Order*, the Commission clarified the porting obligations of wireline carriers in connection with wireless carriers, two weeks before the implementation of wireless porting, in the top 100 MSAs, finding that the obligation to port exists even if the wireless carrier does not have a point of interconnection or numbering resources in the same rate center as the ported number. Notwithstanding the short time-period before implementation, the Commission required wireline carriers to be able to implement porting in accordance with the *Order* by November 24, 2003, finding that “the record indicates that major system modifications are not required and that several wireline carriers have already announced their technical readiness to port numbers to wireless carriers without regard to rate centers.”³ In this regard, the Commission notes that Verizon, Sprint and BellSouth have stated that they will be able to port even if the wireless carrier does not have an interconnection point or numbering resources in the same rate center as the ported number.

With respect to wireline carriers outside the top 100 MSAs, including non-rural local exchange carriers, the Commission found that such carriers “may require some additional time to prepare for implementation of intermodal portability.” The Commission also noted that wireless

³ *Order* at ¶29.

carriers outside the top 100 MSAs are not required to provide LNP prior to May 24, 2004 and, therefore, “are unlikely to seek to port numbers from wireline carriers prior to that date.”⁴

Therefore, the Commission waived, until May 24, 2004, “the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer’s wireline number is provisioned.”⁵

MoKan requests waiver of the Commission’s rules and *Order* until May 24, 2004, as its circumstance, as described below, is more like wireline carriers outside the top 100 MSAs than those in the top 100 MSAs that already have implemented LNP.

Waiver of a Commission rule is appropriate “if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”⁶ Pursuant to section 52.23(e) of the Commission’s rules⁷, requests for waiver of the number portability rules must demonstrate:

- 1) The facts that demonstrate why the carrier is unable to meet the Commission’s deployment schedule;
- 2) A detailed explanation of the activities that the carrier has undertaken to meet the implementation schedule prior to requesting an extension of time;
- 3) An identification of the particular switches for which the extension is requested;
- 4) the time within which the carrier will complete deployment in the affected switches; and
- 5) A proposed schedule with milestones for meeting the deployment date.

In addition, in the *Order*, the Commission stated that wireline carriers may file petitions for waiver of their obligation to port numbers to wireless carriers “if they can provide substantial,

⁴ *Id.*

⁵ *Id.*

⁶ *Northeast Cellular Telephone v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) citing *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

⁷ This rule also requires carriers to file waiver requests 60 days before portability must be implemented. Since the Commission released its *Order* two weeks before the implementation date, MoKan requests a waiver of this requirement, as necessary.

credible evidence that there are special circumstances that warrant departure from existing rules.”⁸

MoKan is a rural telephone company as defined by the Communications Act of 1934, as amended, with approximately 5,119 access lines. It has switches located in the Kansas City, MO-KS MSA. It has a total of fourteen (14) employees and two (2) Central Office (CO) technicians, whose duties include providing all technical support to the company in addition to implementing LNP.

MoKan currently does not provide number portability at all and, prior to letters received from Sprint PCS and Verizon Wireless in May 2003, never was contacted concerning the provision of number portability. Further, because Sprint PCS and Verizon Wireless have no point of interconnection and no numbering resources in MoKan rate centers, MoKan believed it had no obligation to provide portability until, of course, the Commission clarified the obligation of wireline carriers in its *Order* released November 10, 2003. Accordingly, in order to comply with the Commission’s *Order*, MoKan would have to implement all network upgrades and processes required for LNP in two weeks, and not simply “modify” its existing LNP network and processes to comply with the Commission’s *Order*. Thus, the Commission’s finding that carriers like Verizon, Sprint and BellSouth should be able to implement number portability in compliance with its *Order*, without any major system modifications, simply does not apply to MoKan.

Moreover, it would be contrary to the LNP rules for the Commission to deny this waiver and essentially find that MoKan should have expended resources to implement LNP before its obligation to do so was clear. Rather, the Commission’s rules make clear that a local exchange

⁸ *Order* at ¶30.

carrier must implement LNP only after it has received a “specific request” and that it has between 30 days and 6 months for implementation after such a request.⁹ The Commission reaffirmed this limitation this summer and found that LECs are required to provide LNP only “upon specific request for the provision of LNP by another carrier.”¹⁰ The Commission found that the specific request requirement is “reasonable and efficient” because it allows “carriers to target their resources where the greatest need for number portability exists.”¹¹ The Commission further found that maintaining the “specific request” requirement “will not impose new burdens on small carriers operating in the 100 largest MSAs.”¹² MoKan’s decision to delay expending resources until its LNP obligation was clear is in line with these conclusions.

Once the *Order* was released, MoKan contacted its switch vendor to determine when necessary switch upgrades and translations could be provided. The switch vendor provided this information, along with cost information, on November 18, 2003. The switch vendor maintains that the necessary upgrades and translations can be provided in three weeks after an order is placed. In light of MoKan’s lack of experience with number porting and its limited technical staff, MoKan estimates that a significant amount of time will be required after the network upgrades are installed to perform the necessary testing to ensure proper implementation and processing of porting requests and to implement the necessary systems to ensure the proper exchange of information with porting carriers. A listing of MoKan’s switches for which waiver of the rules is requested is provided at Exhibit A. MoKan has not yet determined the time within

⁹ See, 47 C.F.R. §52.23(b)(1) and (c).

¹⁰ Numbering Resource Optimization, *Fourth Report and Order and Fourth Further Notice of Proposed Rulemaking*, CC Docket Nos. 99-200 and 95-116, FCC 03-126 at ¶ 8 (rel. June 18, 2003).

¹¹ *Id.*

¹² *Id.*

which it will complete deployment of LNP in these switches or a proposed schedule for meeting the deployment date, as required by section 52.23(e). Accordingly, MoKan will supplement this waiver when this information is known.

MoKan also is evaluating the other company processes and systems that may need to be modified to accommodate number portability as required in the *Order*, such as billing, call routing, and customer service systems. MoKan's review of these systems is not yet complete and, therefore, the extent of additional tasks that must be performed and the time it will take to implement them is not known. MoKan has not yet determined the total cost of implementing LNP in accordance with the FCC's rules and, therefore, its cost recovery mechanisms also will not be in place by November 24, 2003.

MoKan is evaluating the economic impact of LNP as required in the *Order*. Pursuant to Section 251(f)(2) of the Act, MoKan, as a "rural carrier," has the right to petition the State commission for a suspension or modification of the requirements in Section 251, including the requirement to provide LNP. The two week time period provided by the Commission to implement LNP in accordance with the *Order* effectively would deny MoKan its right to file a 251 suspension request, if necessary.

Finally, grant of a waiver in this circumstance is in the public interest. As an initial matter, there will be an insignificant adverse impact on subscribers if a limited waiver is granted as it is anticipated that portability requests on November 24, 2003, will primarily involve wireless to wireless ports.¹³ In this regard, MoKan notes that it has received no requests or inquiries from subscribers concerning the ability to port their wireline numbers. In addition, the

¹³ See e.g., *Copps Says Commission Shouldn't Wait on Pay-for-Play Examination*, Communications Daily (November 7, 2003); *FCC Expected To Act On Wireline-Wireless Portability Next Week*, Communications Daily (November 6, 2003).

public interest demands that appropriate system modifications are implemented and tested to ensure reliability and efficiency in the porting process. Without appropriate system testing, there will be delays and errors in porting numbers, which is not in the best interest of the consumer or either carrier involved with the port.

Based on the foregoing, MoKan requests a waiver of the Commission's rules and *Order* until May 24, 2004, for the reasons discussed herein.

Respectfully submitted,

**MOKAN DIAL TELEPHONE
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EXHIBIT A

<u>Equipment Type</u>	<u>Location</u>	<u>CILLI Code</u>
Nortel DMS-10 HSO	Louisburg, KS	LSBGKSXADSO
Nortel DMS-10 SSO	Hillsdale, KS	HLSDKSXADSO
Nortel DMS-10 SSO	Rantoul, KS	RNTLKSXADSO
Nortel DMS-10 SSO	Freeman, MO	FRMNMoxADSO

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify copies of the foregoing Petition For Waiver were sent by U.S. Mail on this 21st day of November, 2003 to the persons listed below:

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